

**IN THE UNITED STATES
PATENT AND TRADEMARK OFFICE**

Appl. No. : 10/518,262

Applicant(s): Wolfgang Obermann

Filed: December 16, 2004

TC/A.U.: 3700/3724

Examiner: G. Alie

Atty. Docket: AT020039

Confirmation No.: 8325

Title: Hair Cutting Apparatus Comprising Means for Preventing Cut Hair from Flying Off

APPEAL BRIEF

Honorable Assistant Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In connection with the Notice of Appeal filed on March 11, 2008, Applicants provide the present Appeal Brief.

Table of Cases

1. *W.L. Gore & Assoc., Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303, 313 (Fed. Cir. 1983).
2. *In re Paulsen*, 30 F.3d 1475, 31 USPQ2d 1671 (Fed. Cir. 1994).
3. *In re Spada*, 911 F.2d 705, 15 USPQ2d 1655 (Fed. Cir. 1990).
4. *Minnesota Min. & Mfg. Co. v. Johnson & Johnson Orthopaedics, Inc.*, 976 F.2d 1559, 24 USPQ2d 1321 (Fed. Cir. 1992).
5. *Scripps Clinic & Res. Found. v. Genentech, Inc.*, 927 F.2d 1565, 18 USPQ2d

1. Real Party in Interest

The real party in interest as assignee of the entire right and title to the invention described in the present application is Koninklijke Philips N.V. having a principle place of business at Groenewoudseweg 2, Eindhoven, The Netherlands.

2. Related Appeals and Interferences

There are no known related appeals or interferences at this time.

3. Status of the Claims

Claims 1-7 and 21 are pending in the application. Claims 1-7 and 20 are the subject of the present Appeal. Claims 1-7 and 21 have been finally rejected. Rejected claims 1-7 and 20 are duplicated in the Appendix.

4. Status of Amendments

A final Office Action on the merits was mailed February 11, 2008. A Notice of Appeal was filed on April 11, 2008.

5. Summary of the Claimed Subject Matter¹

In a representative embodiment, a hair-cutting apparatus (e.g., 1, Fig. 1) comprises a cutting arrangement (e.g., 9, Fig. 1) for cutting hair and means (e.g., 22, 24, 26, 28, 34, 35, 37, Figs. 2-4) for counter-acting flying off cut hair from the hair-cutting apparatus, which means comprising a boundary wall (e.g., 22, Figs. 2-4), which extends close to the cutting arrangement (e.g., 9, Fig. 1) and further comprises a stationary portion (e.g., 34, Figs. 3 and 4) and a portion (e.g., 35, Figs. 2-4) that is movable relative to the stationary portion (e.g., 34, Figs. 3 and 4), the movable portion being arranged and positioned to cooperate with the hair to be cut dependent on the nature and condition of

¹ In the description to follow, citations to various reference numerals, drawings and corresponding text in the specification are provided solely to comply with Patent Office Rules. It is emphasized that these reference numerals, drawings and text are representative in nature, and in not any way limiting of the true scope of the claims. It would therefore be improper to import any meaning into any of the claims simply on the basis of illustrative language that is provided here only under obligation to satisfy Patent Office rules for maintaining an Appeal.

the hair. (Kindly refer to claim 1; page 3, line 25 through page 6, line 32; and Figs. 1-4 for additional details.)

6. Grounds of Rejection to be Reviewed on Appeal

The issues in the present matter are whether:

- I. The Drawings are properly objected to under 37 C.F.R. 1.84(p)(4);
- II. The Specification is properly objected to for failure to provide section headings;
- III. The Abstract is properly objected to for failing to commence on a separate sheet;
- IV. Claims 1,2, 5, 6 and 21 are properly are properly rejected under 35 U.S.C. § 102(b) rejected as being unpatentable over *Severson*. (U.S. Patent 1,506,139);
- V. Claims 1-3 and 5-6 are properly rejected under 35 U.S.C. § 102(b) as being unpatentable over *Zucker* (U.S. Patent 3,302,286);
- VI. Claims 3 and 4 are properly rejected under 35 U.S.C. § 103(a) as being unpatentable over *Severson* and *Marchetti, et al.* (US Patent 4,047,427).
- VII. Claim 4 is properly rejected under 35 U.S.C. § 103(a) as being unpatentable over *Zucker*.

7. Argument

In this portion of the Appeal Brief, arguments are provided. Notably, wherever applicable Applicants maintain previous arguments for patentability provided in response to Office Actions.

I. Drawing Objections

The Office Action objects to the drawings for allegedly failing to show all features of the claims. In particular, there is allegedly confusion relative to the use of reference character 37 to designate both the leaf-type spring and the rod-type spring.

Applicants note that the amendment to claim 3 renders this objection moot. However, the reference character 37 is drawn to spring means 37, which is described in the filed application:

As can be seen from FIG. 6, the spring means 37 is formed in the hair-cutting apparatus 1 by a rod-like [sic] spring 37 that extends substantially transversely to the direction of suction 31, that extends in a curve, that is fastened in place in the region of the lateral passage wall 28 and the free, curved end of which cooperates with a strip 38 projecting from the portion 35. The spring 37 may however also be leaf-like.

Thus, spring means 37 comprise leaf-like springs and rod-like springs; and the drawings are commensurate with this description. As such, the objections to the drawings is respectfully traversed.

II. Objection to the Specification

The Examiner has objected to the Specification as lacking section headings. Applicants again submit that section headings are not statutorily required for filing a non-provisional patent application under 35 USC § 111(a), but per 37 CFR § 1.51(d) are only guidelines that are suggested for applicant's use. (See "Miscellaneous Changes in Patent Practice, Response to comments 17 and 18" (Official Gazette, August 13, 1996) [Docket No: 950620162-6014-02] RIN 0651-AA75 ("Section 1.77 is permissive rather than mandatory. ... [T]he Office will not require any application to comply with the format set forth in 1.77")). (See also MPEP § 608.01(a)). Thus, this objection is improper and withdrawal of this objection is respectfully submitted.

III. Objections to the Abstract

The Abstract was objected to and was been amended to rectify certain issues. An abstract was provide in the Rule 111 Response with the instruction that it commence on a new page after page 8, the last page of the claims in the filed application. Thus, this objection is improper and should be withdrawn.

Rejections under 35 U.S.C. § 102(b) in view of *Severson*

Applicants rely at least on the following standards with regard to proper rejections under 35 U.S.C. § 102. Notably, a proper rejection of a claim under 35 U.S.C. § 102 requires that a single prior art reference disclose each element of the claim. *See, e.g., W.L. Gore & Assoc., Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303, 313 (Fed. Cir. 1983). Anticipation requires that each and every element of the claimed invention be disclosed in a single prior art reference. *See, e.g., In re Paulsen*, 30 F.3d 1475, 31 USPQ2d 1671 (Fed. Cir. 1994); *In re Spada*, 911 F.2d 705, 15 USPQ2d 1655 (Fed. Cir. 1990). Alternatively, anticipation requires that each and every element of the claimed invention be embodied in a single prior art device or practice. *See, e.g., Minnesota Min. & Mfg. Co. v. Johnson & Johnson Orthopaedics, Inc.*, 976 F.2d 1559, 24 USPQ2d 1321 (Fed. Cir. 1992). For anticipation, there must be no difference between the claimed invention and the reference disclosure, as viewed by a person of ordinary skill in the field of the invention. *See, e.g., Scripps Clinic & Res. Found. v. Genentech, Inc.*, 927 F.2d 1565, 18 USPQ2d 1001 (Fed. Cir. 1991).

IV. Rejection in view of *Severson*

Claim 1 is drawn to a hair-cutting apparatus and features:

“...[a] *movable portion being arranged and positioned to cooperate with the hair to be cut dependent on the **nature and condition of the hair.***”

In an embodiment, when the movable/adjustable portion 35 of the passage wall 22 is cooperating with hair to be cut, the adjustable portion 35 is adjustable in opposition to the force exerted by the spring means 37, i.e. in the direction of suction 31, as indicated in FIG. 7. The amount by which the adjustable portion 35 is adjusted is dependent in this case on the nature and condition of the hair, i.e. **on the density of the hair, the length of the hair, the thickness of the hair and the stiffness of the hair.**

that is movable relative to the stationary portion. Severson also teaches that the movable portion is being arranged and positioned to cooperate with the hair to be cut dependent on the nature and condition of the hair. It should be noted that the movable portion 37 moves back on its pivot against the action of spring 41 when the movable portion is pushed against the hair. Therefore, the movement of the movable portion is according to the nature and condition of the hair. It should be noted that the amount of the movement of the movable portion in Severson's hair-cutting apparatus is at least depends to the thickness of the hair. The thickness of the hair is considered to be the nature of the hair. See Figs. See Figs. 1-3 and page 2, lines 6-115 in Severson.

While the reference discloses the pivoting of the instrument at portion 11 to regulate the length of the hair, there is no disclosure of the *movable portion's being arranged and positioned to cooperate with the hair to be cut dependent on the nature and condition of the hair*. To wit, only the length of the hair is of concern; and the regulation of the length is by a pivot point at portion 11, which is not even a moveable portion, let alone one arranged and positioned to cooperate with the hair to be cut dependent on the nature and condition of the hair. Stated differently, the hood or cover 37 and its spring actuation 40 are provided to regulate suction, and are not arranged to cooperate with the hair to be cut dependent on the nature and condition of the hair as claimed. Moreover, the reference does not disclose the adjustability of the hair-cutting apparatus dependent on the nature and condition of the hair as claimed.

For at least these reasons, Applicants respectfully submit the applied art fails to disclose at least one feature of claim 1.

V. Rejection in view of Zucker

The Office Action asserts that the comb plate 59 of *Zucker* anticipates the *movable portion's being arranged and positioned to cooperate with the hair to be cut*

*dependent on the **nature and condition** of the hair* as featured in claim 1. Applicants respectfully disagree.

The comb plate 59 is floatingly mounted to the main frame 12 by wings or extensions 62. The comb plate 59 includes teeth 60 and lifts hair and aligns it and brings it into cutting position in juxtaposition with the clippers 24a. However, the reference fails to disclose the arrangement of a movable portion *being arranged and positioned to cooperate with the hair to be cut dependent on the **nature and condition***. Rather, there is merely a description of aligning the hair to be cut; and conspicuously there is neither mention of nature or condition of the hair being cut nor of the adaptability of the position and arrangement of any components dependent thereon.

Rejections are Improper

For at least the reasons set forth above, Applicants respectfully submit that the art applied in the rejections for anticipation each fails to disclose at least one feature of independent claim 1. Thus, a *prima facie* case of anticipation has not been made and claim 1 is patentable over the applied art. Moreover, claims 2-7 and 21, which depend from claim 1 are patentable for at least the same reasons.

Rejections under 35 U.S.C. § 103

VI. Rejections in view of *Severson and Marchetti, et al.* (US Patent 4,047,427).

The rejection of claims 3 and 4 under this section of the Code has been considered. As these claims depend from claim 1, which is patentable over the applied art, claims 3 and 4 are patentable for at least the same reasons.

VII. Rejections in view of *Zucker*.

The rejection of claim 4 under this section of the Code has been considered. As these claims depend from claim 1, which is patentable over the applied art, claim 4 is patentable for at least the same reasons.

Conclusion

In view of the foregoing, applicant(s) respectfully request(s) that the Examiner withdraw the objection(s) and/or rejection(s) of record, allow all the pending claims, and find the application in condition for allowance.

If necessary, the Commissioner is hereby authorized in this, concurrent, and further replies to charge payment or credit any overpayment to Deposit Account Number 50-0238 for any additional fees, including, but not limited to, the fees under 37 C.F.R. §1.16 or under 37 C.F.R. §1.17.

If any points remain in issue that may best be resolved through a personal or telephonic interview, the Examiner is respectfully requested to contact the undersigned at the telephone number listed below.

Respectfully submitted on behalf of:
Phillips Electronics North America Corp.

/s/William S. Francos/

by: William S. Francos (Reg. No. 38,456)

Date: July 11, 2008

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APPENDIX

CLAIMS ON APPEAL

1. Hair-cutting apparatus, comprising:

a cutting arrangement for cutting hair and means for counter-acting flying off cut hair from the hair-cutting apparatus, which means comprising a boundary wall, which extends close to the cutting arrangement and further comprises a stationary portion and a portion that is movable relative to the stationary portion, the movable portion being arranged and positioned to cooperate with the hair to be cut dependent on the nature and condition of the hair.

2. Hair-cutting apparatus as claimed in claim 1, wherein the means comprising a spring means that cooperates with the movable portion of the boundary wall, which spring means spring-loads the movable portion in the direction of the hair to be cut, and wherein the movable portion being movable in opposition to the force exerted by the spring means when cooperating with hair to be cut.

3. Hair-cutting apparatus as claimed in claim 2, wherein the spring means comprise a leaf spring that extends substantially transversely to the direction of movement of the movable portion and that extends in a curve.

4. Hair-cutting apparatus as claimed in claim 3, wherein the resilient force exerted by the rod-type or leaf-type spring is within a range of between 10 mN and 50 mN.

5. Hair-cutting apparatus as claimed in claim 1, wherein a suction arrangement is provided to suck away cut hair, said suction arrangement comprising a suction passage that is defined by passage walls, at least some of which extend close to the cutting arrangement and the ends of which situated close to the cutting arrangement define a suction opening through which air can be sucked into the suction passage in a direction of suction at a given velocity of flow, and wherein a passage wall is formed by the boundary wall having the stationary portion and the movable portion.

6. Hair-cutting apparatus as claimed in claim 5, wherein the suction arrangement comprising varier means for varying the velocity of flow in the region of the suction opening, and wherein the varier means are formed by the movable portion of the boundary wall.

21. Hair-cutting apparatus as claimed in claim 1, further comprising a suction arrangement substantially contained in the apparatus.

APPENDIX

EVIDENCE (None)

APPENDIX

RELATED PROCEEDINGS (None)